FILED

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No. 1

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT E. BROWN,

Petitioner,

v.

CITY OF WILMINGTON, JIM SILLS, MAYOR;
DELDOT;
CITY COUNCIL FOR THE CITY OF WILMINGTON;
CITY PLANNING DEPT;
MBNA BANK OF AMERICA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROBERT E. BROWN
1024 Walnut Street
Wilmington Delaware 19801
(302) 652-9959

QUESTIONS PRESENTED

1. Did United States District Judge Roderick R. McKelvie violate Canon 1, 2, C, 3 (a), (b), and (c) of Judicial Conduct?

2. Did Judge McKelvie violate 28 USC 144, and 28 USC 455, (a), (b), (1), (2), (3), by presiding over the case of Starks v. MBNA Bank of America, and the Robert E. Brown, and Micro Business Community, vs. City of Wilmington, Jim Sills, Mayor, DELDOT; City Council for the City of Wilmington, City Planning, and MBNA Bank of America, at the same time create a conflict of interest, Prejudice, partiality, bias, or bent?

3. Did the violation of Canon 3, (a), (b), of Judicial Conduct by Judge McKelvie deny Robert E. Brown, and Micro Business Community their 5th and 14th Amendment rights of "Due Process and Equal Protection, and Rights of Liberty, under the law, provided to them by the United States Constitution?

LIST OF PARTIES

PETITIONERS - Robert E. Brown and Micro Business Community (Knotty Pine Restaurant i.e. Cliff and Stella Dunning, Viola's Beauty Salon i.e. Viola Dillard, Phalanges Beauty Salon i.e. Sandra Smithers, Walnut Street Deli i.e. Robert E. and Shirley H. Brown).

RESPONDENTS - City of Wilmington; Jim Sills; Mayor; DELDOT; City Council for the City of Wilmington; City Planning; MBNA Bank of America.

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UNITED STATES CONSTITUTIONAL AMENDMENT RIGHTS:

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OPINIONS BELOW

[X] For cases from federal courts:
The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

[X] The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

[X] The opinion of the United States Third Circuit Court of Appeals of the Writ of Mandamus appears at Appendix L, L1, and is unpublished.

JURISDICTION

[X] For cases from federal courts:
The date on which the United States Court of Appeals decided my case was August 2, 2001.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 31, 2001, and a copy of the order denying rehearing appears at Appendix B

The Jurisdiction of this Court is invoked under 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTE

1. 28 USC 144, BIAS OR PREJUDICE OF JUDGE - Appendix - C
2. 28 USC 455, DISQUALIFICATION OF JUSTICE, JUDGE, OR MAGISTRATE - Appendix - D
3. 42 USC 1983, Civil action for deprivation of rights. Appendix - E
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RULES

1. CANON 3, Performing the duties of judicial office impartially and diligently Appendix - G
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3. CANON 1, Upholding the integrity and independence of the judiciary - Appendix - G1

CONSTITUTION OF THE UNITED STATES

5th AMENDMENT - Due Process and Equal Protection under the Law. - Appendix - H

14th AMENDMENT - Due Process and Equal Protection under the Law - Appendix I

STATEMENT OF THE CASE

1. This case derives out of former Mayor Jim Sills administration, the first Afro- American Mayor of the City of Wilmington, Delaware, who served two terms, from the years of 1992 to the year 2000. Mayor Jim Sills's administration and State Representatives developed a project to create jobs in the downtown Business district of the City of Wilmington amongst the Micro Business Community. A complete City block was offered to MBNA Bank of North America, along with tax abatements for five years, as an incentive to locate its international headquarters in the City of Wilmington, and MBNA Bank of America accepted.

2. During the period of the Sills administration MBNA Bank went on a buying spree. It bought businesses, and residential properties at an alarming rate. As a result of locating their international headquarters in center City of Wilmington, their project spread to include the tearing down of businesses and residential properties within the downtown business district and building five more buildings and parking facilities each encompassing a complete City block. These buildings bordered the Micro Business Community who complained of the inconvenience, encroachment and the lack of notification by the Sills administration. The taking of public Streets, and public parking, requires notification according to the rules of Wilmington City Charter, State laws, and City Ordinance. Notification is required by registered mail to landowners whose properties are affected by the changing or taking. In

addition, the required impact studies were not performed, nor any compensation made for the affected landowners according to law. These facts were revealed to the Micro Business Community by State Representative Arthor Scott, and Senator Bob Marshall of Delaware, from whom the Micro Business Community sought relief from their dilemma without success.

3. During the period of the MBNA Bank project development members of the Micro Business Community met with MBNA Bank, and State Representatives to address their issues and expressed their concerns and problems resulting from the project. There was no resolution to the issues of relief of the inconvenience and encroachment.

4. The Micro Business Community hired an Attorney, Mr. Edward Morris, who assured the Micro Businesses that their issues were well founded in law. The Attorney contacted MBNA Bank, three or four times and for some unknown reason backed out of his promise to sue on the Micro Business Communities behalf.

5. Robert E. Brown spokes person for the Micro Business Community, the owner and operator of the Walnut St. Deli, along with his wife Shirley H. Brown, filed suit on behalf of the Micro Business Community. On August 13, 1999, Robert E. Brown served notice on Mayor Jim Sills, Chief Executive of the City of Wilmington, by certified mail return receipt, (SEE: Appendices J, J1, J2). On August 13, 1999, service was made on Charles Cawley, CEO. of MBNA Bank, by certified mail return receipt requested. (SEE: Appendix K, K1, K2).

6. Charles Oberley, Attorney for MBNA Bank, and former two term State Attorney General who was representing MBNA in another case, captioned Sparks v. MBNA Bank, allowed the Clerk of the United States District Court to assign the Robert E. Brown and Micro

Business Community v. City of Wilmington, Mayor Jim Sills, City Council, DELDOT, City Planning, and MBNA Bank case to Judge Roderick R. McKelvie, who was the same Judge presiding over the Starks v. MBNA Bank Case. This action means Judge McKelvie was presiding over two cases involving Respondent MBNA Bank at the same time. This appears to have been a conflict of interest.

7. Judge McKelvie dismissed the Robert E. Brown and Micro Business Community v. City of Wilmington, Mayor Jim Sills, City Council, DELDOT, City Planning Dept. and MBNA Bank case for ineffective service of Process, and Brown and Micro Business Community Appealed to the Third Circuit Court of Appeals.

8. During this time Robert E. Brown and Micro Business Community were made aware of the fact that Judge McKelvies' presiding over the two cases at the same time were violations of Canon 1, 2, 3(a), (b), 1, 2, 28 USC 144, and 28 USC 455 (a), (b). Brown filed a Writ of Mandamus in the Third Circuit Court of Appeal, raising the issue of recusation on behalf of Judge McKelvie. The Mandamus was denied because an Appellate process was available to Brown at the time. (SEE: Appendix L, L1).

9. In the matter on Appeal to the Third Circuit Court of Appeals; Brown, and the Attorneys for Defendants, Charles Oberley attorney for MBNA Bank and Ms. Paulette S. Moore, attorney for Mayor Sills and City Defendants were placed under court order Briefing schedule. Brown and Oberley submitted briefs and Ms. Paulette S. Moore failed to file a brief on behalf of the Mayor and City Defendants.

10. Third Circuit Court of Appeals affirmed the District Court decision, and Brown filed for rehearing enbanc, which was denied without reason. The Third Circuit Court of Appeals did not address the matter of recusa-

tion, and Brown files a Writ of Certiorari to the United State Supreme Court.

REASONS FOR GRANTING THE WRIT

The reasons for granting a writ of Certiorari is because the appeals court decision conflicts with the Supreme Court decision in *Likey v. United States*, 510 U.S. 540, (1994) and *Bernofsky v. Tulane University*, 962 F.Supp. 895(E.D. LA. 1997). These two case decisions have set the criterion, profile and remedy for cases wherein conflicts exist. (SEE: Supreme Court Rule 10 (a), (b), (c)).

1. Judge Roderick R. McKelvie, presiding over cases involving Respondents MBNA Bank in two different cases at the same time draws in to question the standard set by Canon 1, of Judicial Conduct, and the Integrity of the Judicial system. His actions draw in to question Canon 2, the Appearance of impropriety, and thirdly his long term relationship with the Charles Oberley, former Attorney General of the State of Delaware and Attorney for MBNA Bank, clearly gives the appearance of a bent, prejudice, bias, and partiality.

2. The United States Supreme Court cases cited has established in 28 USC 144, that the bias or prejudice of a judge under minds the fundamental principle of a fair trial, and 28 USC 455(a), (b), 1, 2, revisions established in *Likey v. United States* 510 U.S. 540, (1994), places the obligation squarely on the Judge to disqualify himself where such conflicts exists.

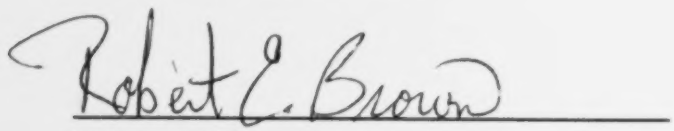
3. This case should be heard by United States Supreme Court in the interest of every citizen of the United States of America, because the lower court decisions under mind the confidence and public trust in the United States Constitution, and what it stands for.

4. This case should be heard by United States Supreme Court in the interest of the citizens of the United States, their rights established by 42 USC 1983 Civil Rights Acts, and 42 USC 1985, Conspiracy to interfere with Civil Rights, that no citizen should be deprived of rights secured by the guarantees of the 5th Amendment, that no citizen; "Be deprived of life, liberty, or property without due process of the law; nor shall private property be taken for public use, without just compensation." The 14th Amendment lends its support, in Section 1; "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

CONCLUSION

It is for these reasons we feel that the petition for a writ of certiorari should be granted.

Respectfully Submitted,



Robert E. Brown
1024 Walnut Street
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(302) 652-9959

Date: January 23, 2002

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[1]Should this Court decide not to hear this case at this time, we respectfully request remanding this case back to the Third Circuit Court of Appeals to be decided on the issues involving Judge R.R. McKelvie's violations of canon 1, 2, 3, 28 USC 144, and 28 USC 455 (a), (b), 1, 2, 3.

PROOF OF SERVICE

I, Robert E. Brown, do swear or declare that on this date, January 15, 2002, as required by Supreme Court Rule 29 I have served this PETITION FOR A WRIT OF CERTIORARI on each party to the Above proceeding an envelope containing the above documents in The United States mail, and hand delivered properly addressed to each of them and with First-class postage prepaid.

The names of those served are as follows:

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s/ Joan D. Joseph
Notary Public

January 23, 2002

JOAN D. JOSEPH
NOTARY PUBLIC OF DELAWARE
My Commission Expires July 2, 2003